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**Moran Towing Corporation**50 Locust Avenue
New Canaan, CT 06840-4737**Alan Marchisotto**

Vice President and General Counsel

Tel: 203-442-2846

Fax: 203-442-2857

amarchisotto@morantug.com

April 29, 2004

Docket Management Facility
MARAD Docket No. MARAD-2003-15171
U. S. Department of Transportation
Room PL-401
400 Seventh Street, SW
Washington, DC 20590-001

Fax: 202 493-2251

Re: 46 CFR Part 221
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Dear Sirs:

I am pleased to submit for your consideration the comments of Moran Towing Corporation concerning the above-referenced NPRM. Founded in 1860, Moran operates a fleet of 80 tugboats and 25 barges from thirteen ports on the East and Gulf coasts of the United States. Its involvement in the "Jones Act" trade long predates enactment of the Jones Act.

Throughout our history as an independent nation Congress has repeatedly reaffirmed its commitment to the concept of American flag cabotage, most recently embodied in the Jones Act. The only exception to this unvarying rule involves foreign ownership of "coastwise" vessels that are employed exclusively in carriage of the vessel owner's proprietary cargo. In 1996, Congress enacted legislation that permitted lease financing of vessels engaged in the coastwise trade whereby foreign financing institutions could own such vessels and bareboat charter them to qualified American operators. The purpose of this legislation was to broaden the pool and forms of capital available to Jones Act vessel owners. Congress's historic policy favoring citizen ownership and operation of coastwise trade vessels remained immutable. Nonetheless, machination immediately ensued, transforming a financing provision into a vehicle for circumventing the long established citizenship requirements of Congress. The NPRM seeks to prevent further misuse of the lease finance rules.

You have already received detailed comments on the NPRM from AWO and the Maritime Cabotage Task Force, with which Moran is in agreement. Two

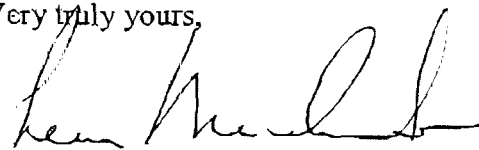
alternatives have been presented to deal with the issue of regulating charters back to the original owner or its affiliates. Alternative 1 would prohibit the financing owner of the vessel or any of its affiliates from being "primarily engaged" in the "direct operation or management" of vessels. At the outset, it must be observed that this proposal invites wrangling about whether the transaction being examined falls within the regulatory language. It also requires an examination of what could well be a complex series of transactions involving numerous companies in numerous jurisdictions that can easily be designed to obscure links between the ultimate subcharterer and the vessel owner. Are regulators prepared to follow these trails? More importantly, is this an appropriate use of agency resources given that Congress has authorized only one policy exception to the cabotage laws namely, the Bowater situation in which the vessel is exclusively engaged in carriage of the vessel owner's cargo. Which brings us to Alternative 2. This proposal has the virtue of reflecting long-standing policy in this area and of using the Bowater exception on the sole criterion for evaluating whether a chartering arrangement is acceptable. Moran believes it is preferable to Alternative 1. However, this should be coupled with a requirement that MARAD should approve proprietary cargo arrangements.

Moran endorses the proposed three-year limitation on grandfathering coastwise vessel endorsements. Those who sought to enter the coastwise trade through use of finance related schemes that clearly failed to comport with Congressional policy or intent took a business risk. Allowing three years to unwind these arrangements is arguably generous. The only goals should be to allow sufficient time to bring offending vessels into compliance. An owner that took the business risk of circumventing government policy should not be economically rewarded for its efforts.

It is Moran's view that the Coast Guard should have access to third party auditors when deemed necessary to ensure regulatory compliance. Auditors should be pre-approved by the Coast Guard, with the cost paid by the vessel owner. The Coast Guard should also solicit industry comment through public notice procedures.

Moran appreciates this opportunity to submit comments on the NPRM. Since 1996, Moran has invested over \$185 million in the renewal, upgrade and expansion of its fleet. This investment, and planned future investments in excess of \$70 million, are made in reliance on the faithful and consistent enforcement of Congressional cabotage policy. We urge prompt enactment of remedial regulations.

Very truly yours,


VP/EC

AM:mcc